

ESTTA Tracking number: **ESTTA241241**Filing date: **10/07/2008**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**Petition for Cancellation**

Notice is hereby given that the following party requests to cancel indicated registration.

Petitioner Information

Name	Mr. Richard Groman		
Entity	Individual	Citizenship	UNITED STATES
Address	2512 Center Street Bethlehem, PA 18017 UNITED STATES		

Attorney information	Jules D. Zalon Law Office of Jules D. Zalon 20 Curtis Avenue West Orange, NJ 07052 UNITED STATES jzalon@zalonoffice.com Phone:973-324-2444
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Registration Subject to Cancellation

Registration No	2653125	Registration date	11/26/2002
Registrant	BALDWIN PIANO, INC. 309 PLUS PARK NASHVILLE, TN 37217 UNITED STATES		

Goods/Services Subject to Cancellation

Class 041. First Use: 1999/01/00 First Use In Commerce: 1999/01/00
All goods and services in the class are cancelled, namely: Player piano rolls, namely perforated music rolls for use in player pianos

Grounds for Cancellation

<i>Torres v. Cantine Torresella S.r.l.Fraud</i>	808 F.2d 46, 1 USPQ2d 1483 (Fed. Cir. 1986)
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Attachments	Cancellation Petition.pdf (4 pages)(12340 bytes)
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Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Signature	/Jules D. Zalon/
Name	Jules D. Zalon
Date	10/07/2008

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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RICHARD GROMAN, doing business as
KEYSTONE MUSIC ROLL COMPANY,

PETITION FOR CANCELLATION

Cancellation No. _____

Petitioner,

- against -

Registration No. 2,653,125

BALDWIN PIANO, INC.,

Date of Issuance: Nov. 26, 2002

Respondent.

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Petitioner, a citizen and resident of the State of Pennsylvania, whose principal place of business is at 2512 Center Street, Bethlehem, Pennsylvania believes that he is or will be damaged by Registration No. 2,653,125 and hereby petitions to cancel the same.

Description of respondent's registration:

Player piano rolls, namely perforated music rolls
for use in player pianos, in International Class 41.

As grounds for this petition, it is alleged that:

1. Petitioner is the owner of the trademark AMPICO which he has used in connection with player piano rolls, namely perforated music rolls for use in player pianos, since June, 1986.

2. Petitioner's use has been valid and continuous and substantially exclusive since the date of first use, and has not been abandoned. As a result of the wide and prominent advertising and use of such mark as aforesaid, the term AMPICO is recognized as a strong

trademark for player piano rolls, and petitioner is widely known as its owner. Thus, AMPICO is symbolic of extensive good will and consumer recognition built up by petitioner through substantial amounts of time and effort in advertising and promotion. In view of the similarity – in fact the identical nature – of the respective marks and the identical nature of the goods of the parties, it is alleged that respondent's registered mark suggests a false connection between petitioner and respondent. In addition, it is alleged that respondent's registered mark so resembles petitioner's mark previously used in the United States, and not abandoned, as to be likely to cause confusion, or to cause mistake, or to deceive.

3. Respondent's registration was obtained fraudulently in that in the formal application papers, respondent's predecessor-in-interest David L. Saul under oath and on notice of 18 USC 1001, stated that:

The undersigned . . . declares that he is the owner of the service mark [sic] sought to be registered . . . [and] to the best of his knowledge and belief no other person, firm, corporation, or association has the right to use the above identified mark in commerce, either in the identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection the services [sic] of such other person, to cause confusion, or to cause mistake, or to deceive; and that all statements made of his own knowledge are true

4. Said statement was false – and the applicant knew it was false – in that petitioner was, at the time that the declaration was made, and for several years prior thereto, using the mark and was widely advertising and promoting the mark throughout the United States.

5. In fact, on February 23, 1999, well prior to Saul's filing of the AMPICO application, petitioner's attorney Jules D. Zalon wrote to the applicant, advising him that petitioner had been using the AMPICO mark since at least as early as 1986. Moreover, in or about August, 1999, petitioner actually filed a trademark infringement action against Mr. Saul, making the same allegation. Said lawsuit was settled by an informal arrangement pursuant to which plaintiff agreed to Mr. Saul's use of the mark in the manner in which he was then using it.

6. Thus, the representations – in the application – that Mr. Saul was the “owner” of the mark, and that “no other person, firm, corporation, or association [had] the right to use the . . . mark in commerce” were flatly and knowingly false. Such statements were made with the intent to induce authorized agents of the United States Patent and Trademark Office to grant said registration, and, reasonably relying upon the truth of said false statements, the United States Patent and Trademark Office did in fact grant said registration to respondent's predecessor in interest.

7. Petitioner was damaged by said false statements, and the registration issued in reliance thereon in that petitioner, since 1986, has continuously used the mark on player piano rolls and petitioner's continued and legal use of said mark will be impaired by the continued registration of said mark of respondent.

WHEREFORE, petitioner prays that Registration No. 2,653,125 be cancelled and that this petition for cancellation be sustained in favor of petitioner.

Petitioner hereby appoints Jules D. Zalon, a member of the bar of the State of New Jersey to act as attorney for petitioner herein, with full power to prosecute said petition, to transact all relevant business with the Patent and trademark Office and in the United States courts and to receive all official communication in connection with this petition for cancellation.

Dated: West Orange, New Jersey
October 7, 2008

_____/Jules D. Zalon/_____
Jules D. Zalon
20 Curtis Avenue
West Orange, New Jersey 07052
Tel: (973) 324-2444
Fax: (973) 324-2180
Email: jzalon@zalonoffice.com
Attorney for Petitioner